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Indexed as:  
M.D.T. (Re)

IN THE MATTER OF an appeal by M.D.T.  
AICAC File No.: AC-99-118

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[2000] M.A.I.C.A.C.D. No. 11

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Manitoba Automobile Injury Compensation Appeal Commission  
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C., and  
C. Settle, Q.C.  
Heard: March 14, 2000.  
Decision: March 21, 2000.  
(13 paras.)

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Issues(s):  
Restricted ROM of wrist--basis of determining

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Relevant Sections:  
Sections 126 to 130 of the MPIC Act ('the Act') and  
Section 8(b) of Schedule A to Manitoba Regulation  
41/94.

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Appearances:  
Manitoba Public Insurance Corporation ('MPIC') was represented  
by Joan McKelvey.  
The appellant, M.D.T., appeared on her own behalf.

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MAIC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE  
PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING  
PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

#### REASONS FOR DECISION

[para1] There is but one issue before us in this case,  
namely: the basis upon which the restriction of the range of  
motion in the Appellant's left wrist should be determined.

#### THE FACTS:

[para2] \* M.D.T.'s 1989 3/4-ton GMC truck was in collision  
with a 1985 Buick passenger vehicle in Winnipeg on June 5th,  
1996. The front of her truck hit the passenger's side of the

Buick;

[para3] \* Her left wrist, hyperextended in the course of that accident, sustained a partial scapholunate ligament tear and a tear of the triangular fibrocartilage. She underwent debridement of both those tears but is left with residual pain and a limitation in the range of motion ('ROM') of her left wrist;

[para4] \* Her ROM of the left wrist was assessed, initially, on March 25th, 1998, by Lorraine Robertson, MPT, Manitoba physiotherapist, of Main Physiotherapy & Wellness Clinic. A reassessment was performed on December 7th, 1999, by Don Charbonneau, B.M.R.-P.T., C.A.F.C.I., of River East Physiotherapy and Sports Fitness Clinic;

[para5] \* Section 8(b) of the Schedule A to Manitoba Regulation 41/94 makes the following provisions for permanent impairments in the form of restriction of movement to a wrist (the percentages being applied to a statutory maximum which, at the date of M.D.T.'s accident, was \$104,138.00):

(b) Restriction of Movement:

- |       |                      |           |
|-------|----------------------|-----------|
| (i)   | in flexion           | 0.5 to 2% |
| (ii)  | in extension         | 0.5 to 2% |
| (iii) | in ulnar angulation  | 0.5%      |
| (iv)  | in radial angulation | 0.5%      |

[para6] \* MPIC, in determining the extent to which the range of motion of M.D.T.'s wrist had become restricted, used as its norm the figures contained in the Guidelines of the American Medical Association;

[para7] \* M.D.T.'s evidence is that, before her accident, the range of her motion of her left wrist was equal to that of her right one, although she is right hand dominant; the ROM of her right wrist was measured by Mr. Charbonneau on December 7th, 1999, at the time he measured the ROM of her left one;

[para8] \* The degrees of ROM that are, therefore, relevant to this appeal, are these:

Restriction	March '98 report	December '99 report
In flexion	55 [degrees]	50 [degrees]
In extension	65 [degrees]	49 [degrees]

In ulnar angulation	30 [degrees]	32 [degrees]
In radial angulation	10 [degrees]	15 [degrees]
A.M.A. Guidelines	Right wrist, December 1999	
	60 [degrees]	75 [degrees]
	60 [degrees]	77 [degrees]
	30 [degrees]	47 [degrees]
	20 [degrees]	21 [degrees]

[Quicklaw note: The above five columns appear side by side in the original.]

#### DISCUSSION:

[para9] The Appellant argues that it is her norms, rather than those of the A.M.A., that should be adopted in determining the extent to which her range of motion has been diminished by her accident. She points out that, prior to that accident, she was very active physically, played golf, was a gymnast and enjoyed an all-round flexibility markedly greater than that of the average woman. She points to the measured range of motion of her right wrist, and to the fact that it substantially exceeds the A.M.A. Guidelines, save only in the context of radial deviation.

[para10] Counsel for MPIC submits that it would be altogether too dangerous to adopt such a subjective set of norms as is proposed by the Appellant, and that the A.M.A. Guidelines give consistency and certainty in every case, regardless of the prior condition of the claimant.

[para11] With deference, we accept the position of the Appellant in this case. The position advanced on behalf of MPIC would be the proper one, were there no reliable evidence of a claimant's prior condition. In M.D.T.'s case, however, we have her own, credible evidence of her prior condition, supported by the measurements of her right wrist range of motion taken by an independent physiotherapist. We also accept M.D.T.'s evidence that, although the dexterity and grip strength of her right hand were almost undoubtedly greater than those of her left, the difference in ranges of motion between her two wrists was negligible prior to her accident.

[para12] In his decision letter of September 29th, 1998, MPIC's Internal Review Officer was obliged to rely upon the measurements taken in March of that year. In consequence, he found that the ulnar angulation of M.D.T.'s left wrist was

within normal limits, and he made no award in that regard. By December, 1999, it had become apparent that there was a measurable ulnar deviation, that her flexion and extension were reduced by about one-third, and that a more appropriate award, calculated by using the Appellant's right wrist ROM as the norm, would be as follows:

flexion	0.67%		
extension	0.64%		
ulnar angulation	0.5%		
radial angulation	0.5%		
Total	2.31%	x \$104,138.00 =	\$2,405.59

Since M.D.T. has already received: \$1,562.07

for her wrist injury (i.e., 1.5%), she  
is entitled to a further: \$843.52

plus interest at the statutory rate on that sum, calculated from the 5th day of June 1996 to the date of actual payment.

[para13] The foregoing presumes that M.D.T. has, in fact, received the additional \$520.69 to which she became entitled as a result of a letter from Ms. Joan McKelvey, counsel for MPIC, addressed to the Appellant on March 8th, 2000. If those funds have not already been sent to the Appellant, then they must be added to the amount referred to above.

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